



बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

11 आषाढ 1931 (श0)
(सं0 पटना 308) पटना, बृहस्पतिवार, 2 जुलाई 2009

निर्वाचन विभाग

अधिसूचना

22 जून 2009

संख्या-एम-1-003/2009-41—भारत निर्वाचन आयोग की अधिसूचना सं0 82/BR- LC/4/2003/ 2008, दिनांक 1 जनवरी 2009 एवं निर्वाचन अर्जी संख्या 4/2003 में दिनांक 19 सितम्बर 2008 को पारित आदेश को सर्वसाधारण की जानकारी के लिए प्रकाशित किया जाता है।

बिहार—राज्यपाल के आदेश से,
सोहन कुमार ठाकुर,
सहायक मुख्य निर्वाचन पदाधिकारी,
—सह—सरकार के अवर सचिव।

भारत निर्वाचन आयोग

अधिसूचना

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001, दिनांक: 1 जनवरी, 2009/11 पौष, 1930 (शक)

सं० 82/बिहार-वि०प०/4/2003/2008:- लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा-106 के अनुसरण में भारत निर्वाचन आयोग सहर्सा-एवं-मधेपुरा-एवं-सुपौल स्थानीय प्राधिकारी निर्वाचन क्षेत्र से बिहार विधान परिषद के लिए 10 जुलाई, 2003 को संपन्न निर्वाचन में श्री बलराम सिंह यादव उर्फ बलराम सिंह के निर्वाचन को प्रश्नगत करते हुए श्री अभय कुमार सिंह द्वारा दाखिल की गई 2003 की निर्वाचन याचिका संख्या 4 में पटना उच्च न्यायालय के दिनांक 19 सितंबर, 2008 के आदेश को एतद्वारा प्रकाशित करता है।

आदेश से,
आर० के० श्रीवास्तव,
सचिव, भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

NOTIFICATION

Nirvachan Sadan, Ashoka Road, New Delhi- Dated : 1st January, 2009/11 Pausa, 1930 (Saka)

No. 82/BR-LC/4/2003/2008:- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High Court of Judicature at Patna dated 19th Septemeber, 2008 in Election Petition No. 4 of 2003 filed by Shri Abhay Kumar Singh calling in question the election of Shri Balram Singh Yadav *alias* Balram Singh to the Bihar Legislative Council from Saharsa-cum-Madhepura-cum-Supaul Local Authorities Constituency held on 10th July, 2003

By order,
R.K. SRIVASTAVA,
Secretary

ELECTION PETITION No. 4 OF 2003

**In the matter of an application under sections 80, 80A and 81 of the
Representation of the people Act, 1951**

ABHAY KUMAR SINGH (Petitioner)

VERSUS

BALRAM SINGH YADAV *alias* BALARAM SINGH (Respondent)

**For The Petitioner M/s S.N.P. Sharma, Sr. Advocate and Mr. A.K. Singh, Advocate
For the Respondent M/s. S.B.K Mangalam and Paras Nath Advocates**

PRESENT

THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

A.K. Tripathi, J.—The present election petition has been filed by the petitioner calling in question the election of the returned candidate, namely Balram Singh Yadav alias Balram Singh as a member of the Bihar Legislative Council from 20-Saharsa-cum-Madhepura-cum-Supaul Local Authority Election Constituency. The prayer is for declaring the election of the respondent to be illegal and void on the ground of improper rejection of the nomination of the petitioner under section 100(1),(c) of the Representation of People Act, 1951.

On 2nd June 2003 based on the communication and the letter issued by the Election Commission of India election for 24 Local Authorities Constituency in the State of Bihar was announced. The Collector, Saharsa was designated as the Returning Officer for Sharsa-cum-Madhepura-cum-Supaul Local Authorities Constituency to fill up a vacancy for the Legislative Council from the said Constituency. The election was announced on 2nd June 2003, nomination papers were to be filed upto 16th June 2003. The date of scrutiny of the nomination papers was fixed on 24th June 2003 and the date of polling was fixed on 10th July 2003. The date for final declaration of the result was 14th July 2003.

Petitioner's case is that he had all the eligibility for contesting the election aforesaid and decided to file his nomination. Altogether 51 candidates filed their nomination papers including the present petitioner. On 24th June 2003 the nomination papers of all the candidates were scrutinized and all the nomination papers were declared to be valid except the nomination of this petitioner. In other words, out of 51 candidates the sole rejection of a nomination paper was that of the petitioner.

Petitioner thereafter obtained a certified copy of the order of rejection which was furnished to him on 26th June 2003. The order in question has been brought on record along with the election petition as annexure-1.

After going through the reasoning and verifying the facts and on due declaration of result of the election declaring Balram Singh Yadav as the successful candidate, the petitioner in his wisdom decided to file the present election petition under the Representation of People Act, 1951.

It is necessary to reproduce the reason for rejection of the nomination paper (Ext.2) of petitioner because not only the issues have been formulated for deciding the election petition based on the same but the final adjudication in the present election petition will have to be rendered on the same.

भाग - 4

नाम निर्देशन-पत्र को प्रतिगृहीत या खारिज करने वाले रिटर्निंग ऑफिसर का विनिश्चय

मैंने इस नाम निर्देशन-पत्र को लोक प्रतिनिधित्व अधिनियम, 1951 की धारा-36 के अनुसार परीक्षित कर लिया है और मैं निम्नलिखित रूप में विनिश्चय करता हूँ/कि अस्वीकृत करता हूँ क्योंकि 1 जनवरी 2002 की अर्हता के आधार पर मतदाता सूची की अद्यतन सत्यापित प्रति नहीं जमा किया है (निर्धारित अवधि तक)

तारीख 24-6-2003

(हो)-अस्पष्ट,
निर्वाची पदाधिकारी,
सहरसा-सह-मधेपुरा-सह-सुपौल
स्थानीय प्राधिकार निर्वाचन क्षेत्र, सहरसा।

The above reason for rejection has been extracted from ext. I which is the nomination paper of the petitioner.

Four issues therefore came to be framed which are noted below.—

- (1) Whether this election petition, as framed is maintainable ?
- (2) Whether this election petition is vitiated by non-joinder of necessary parties ?
- (3) Whether the nomination paper of the petitioner was improperly rejected by the Returning officer ?
- (4) Whether the petitioner is entitled to any relief or reliefs ?

Of the above four issues the primary issue for consideration is Issue No.3 relating to improper rejection and the consequential relief in terms of Issue No.4.

Learned Senior counsel appearing on behalf of the petitioner submits that the improper rejection of the nomination paper is a valid ground for setting aside the election in terms of Section 100 (1) (c) of the Representation of the People Act 1951 and that is the primary relief which the petitioner is looking for. He starts with the definition of the word “Constituency” which is contained in section 2 (b), (c) and (f) of the 1950 Act. Reading of the above provisions would show that there are different definitions and territorial boundaries for different “Constituencies”. Since the election in the present case was to the Legislative Council under the Local Authority Constituency in includes 14 Assembly Constituencies within what is known as Bihar Legislative Council Constituency No.20 of Saharsa-cum-Madhepura-cum-Supaul (hereinafter referred to as the Constituency).

Submission is now made with regard to the conditions contained in section 33 (5) of Representation of People Act 1951. Section 33 (5) of the Representation of the People Act, 1951 is reproduced herein below for ready reference:

Section 33(5).— “Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.”

According to the section a candidate is required to furnish certified copy of the electoral roll or the relevant entries of such roll along with his nomination paper if he is an elector of a different constituency. In the present case since the petitioner belongs to the ‘constituency’ encompassing territorial boundary of the Assembly constituency in question, there was no occasion or requirement for him to furnish or annex a voter list or extract thereof. Petitioner belongs to the 110, Raghapur Assembly Constituency which forms part and parcel of the constituency. If that is the legal requirement then even if the petitioner had not annexed any extract of the electoral roll for the year, 2002 he did not commit any breach of the statute. If the extract of 1995 electoral roll was annexed with the nomination paper which continued to be a valid electoral roll even for the subsequent years then the reason recorded by the returning officer that the petitioner did not have the required Aharta (qualification) as on 1st January 2002 and non-furnishing of certified copy of the voter list was a misplaced kind of reasoning. Petitioner’s categorical statement is that there was a deliberate mischief played with his nomination paper and the rejection for the ground indicated by the Returning Officer is not a valid reason in the eye of law. To buttress his submission he further submits that all the 50 other candidates had furnished extracts of electoral roll for various periods. There were a few of 1995, majority for the year, 1998, two for the year 2000 and 2002 and one candidate furnished nothing with his nomination paper except annexing the photo identify card issued by the Election Commission. Ironically even the returned candidate, Balram Singh Yadav had furnished extract of 1998 voter list with his nomination paper which was found to be valid. This fact is borne out from the perusal of the nomination papers and also from a chart furnished by the petitioner which is on record and not disputed by respondent.

With such varied kinds of extracts having been annexed with the nomination papers of other candidates, the Returning Officer did not find any fault whatsoever with their nominations but from where he got this illusion that the petitioner alone had to furnish extract of the certified copy of the voter list of 2002 and must have ‘Aharta’ of 1.12.2002 seems to be in violation of the provision contained in section 33 (5) of the 1951 Act. In otherwords, the rejection of the nomination paper of the petitioner prima facie was not based on any legal or statutory ground but on a nonest ground and this is good enough for election of the respondent to be set aside.

Submission of learned Senior counsel thereafter is that even for the sake of argument if the petitioner or any other candidates had not even attached any extract of the voter list of the constituency in question the Returning Officer was duty bound to scrutinize the nomination papers based on the voter list of the constituency in question as per the details of the entries provided in the nomination paper. If there was omission to scrutinize the nomination papers from the electoral roll of the constituency then he cannot be made to suffer on the ground of failure of the Returning Officer to perform his statutory duty.

The next limb of submission of learned Senior Counsel for the petitioner is that acceptance of nomination paper is more of a rule and rejection is exceptional. The position on this stand is based on a reading of the provision and rulings in this regard on section 36 (5) of the 1951 Act. The nomination paper can be rejected on very limited ground. The object of the scrutiny is not to find faults in it but to detect defects of substantial nature or character. In this regard reliance has been placed on a decision of the Hon'ble Supreme Court in the case of **Ram Awadhesh Singh Vrs Smt. Sumitra Devi reported in AIR 1972 SC 580**. Similar view has also been expressed by the Hon'ble Supreme Court in the case of **Viveka Nand Giri vrs. Nawal Kishore Shahi reported in AIR 1984 SC 856**.

It is contended further that if the Returning Officer had completed the process of scrutiny in accordance with section 33 (4) read with section 33 (5) of the provision of the Representation of the People Act, 1951, there would have been no occasion for rejection of the nomination paper.

Learned counsel appearing for the respondent, namely, Balram Singh Yadav submits that the election petition does not disclose the material fact nor are the pleadings in place in support of the allegation of illegal rejection of the nomination paper. If the material facts are not pleaded the Court would not get into the nitty-gritty of so called illegal rejection of nomination paper of the petitioner. He further pleads that in terms of section 86 of the Act the election petition is fit to be dismissed for non-compliance of sections 81, 82 and 117 of the Representation of the People Act, 1951. Submission has been made as to what constitutes material facts. It is also urged that the petitioner was not a serious candidate because on the date of scrutiny he did not appear before the Returning Officer. A memo was issued to the petitioner by the Returning Officer which was received by one of his proposers about the date and time of the scrutiny but the same was ignored by him. If the petitioner was careful and vigilant enough then may be the present rejection of his nomination would not have happened.

The Court has to examine therefore whether the grounds urged by the respondent against the maintainability of the election petition and the grounds indicated above are cogent or valid.

Attention of the Court has been drawn to the election petition with emphasis on narration of facts and events where a categorical assertion has been made by the petitioner that the rejection or the reason for rejection of the nomination paper of the petitioner was an improper rejection and the reasoning further assigned is in conflict with section 33 (5) of the Representation of People Act, 1951. Since there was no legal duty or requirement cast upon the petitioner or any candidates to annex voter list of the constituency, mere declaration with regard to the Part, the Serial Number and the name of the constituency was more than enough. It was incumbent upon the Returning Officer thereafter to verify from the voter list of the constituency and then either reject or accept the nomination papers. Since the same had not been done and pleadings of the petitioner in this regard are categorical, therefore, the objection raised on behalf of the respondent that the material facts have not been pleaded is not correct.

Learned counsel for the petitioner has drawn the attention of the Court to the written statement which had been filed by the respondent to the election petition. In the first written statement even the respondent is not very sure as to the requirement of annexing extract of the voter list and what was the voter list which was required to be filed. He sums up the position in paragraph-13 of the written statement which is quoted herein below for ready reference as to the stand of the respondent on the issue:

“That the statement made in paragraph no-11 is misleading and misconceived. The petitioner belongs to the another district and he was required to produce the certified copy of the electoral roll as per the notification of the Election Commission.”

Subsequently in paragraph-15 of the written statement a stand has been taken that the candidates were required to file extract of the electoral of the year 1998. An additional written statement was subsequently filed on behalf of the respondent. A reading of the same coupled with the categorical stand taken in the first written statement only muddies the water as to what was required to be filed or not filed or was actually filed along with the nomination paper.

Petitioner does not deny that he had filed an extract of 1995 electoral roll and even in the electoral roll of 1998 the Part and Serial Number where the petitioner's name figured was identical. If the Returning Officer had bothered to turn the pages of 1998 electoral roll at the time of scrutiny then the above declaration of the petitioner in the nomination paper would have stood verified and corroborated. But then the reason for rejection of the nomination of the petitioner is not that the petitioner had not annexed 1998 electoral roll. The reason assigned is that he did not have the **Aharta as on 1st January 2002 and he had not annexed Styapit (certified) extract of the electoral roll in the regard.**

Learned counsel for the petitioner therefore sums up his submission on this issued that the Returning Officer has committed error by illegal rejection of nomination paper of petitioner by imposing a burden upon him which was not required under Representation of People, Act, 1951 or any other provisions in this regard. THE Returning Officer has applied varied standards in scrutiny of the nomination papers and even the reason assigned by him that the petitioner did not have the Aharta (Qualification) as on 1st January 2002 is not based on any requirement of law.

The next submission of the petitioner is to the objection of the respondent that petitioner was not a serious candidate and he did not present himself for scrutiny on the date fixed even when a memo was issued by the Returning Officer which is Memo No.10 dated 23rd June 2003. The said memo is on record along with the nomination paper which is annexure-1 as well as annexure-A to the written statement. The Court is surprised to find that much emphasis is being placed on this memo by the respondent but the memo does not disclose anything. It is a blank memo with nothing indicated as to what purpose and object it was issued and even otherwise it was not received by the candidate or his agent but supposedly by one Samrendra Nath Singh, a proposer of the petitioner. The memo therefore is neither here nor there. On the submission of the respondent that the petitioner was not a serious candidate he submits that since he was a serious candidate therefore he had been targeted by getting his nomination paper rejected, without any valid rhyme or reason available under the law.

The Court also decides to have a look at the oral evidences which have been adduced on this score. Five witnesses were produced on behalf of the petitioner. P.W. 1 is the petitioner himself where he has stated that he was one of the candidates for the "Constituency" of the Local Body and was a voter of 110-Raghopur Assembly Constituency. He stated that his nomination papers were illegally rejected. He filed two sets of nomination papers which were duly signed by him and his proposers. In one of the nomination papers a detailed reason for rejection was recorded but in the second nomination paper the word "Aswikrit Karta Hun" (rejected) only mentioned. He has furnished the details of his name, the Part and the Serial Number of 110-Raghopur Assembly Constituency which is reflected in the voter list of 1998. His name figured at serial no. 444 in Part 11. He also states that a demand of voter list for the year, 2002 was made from him orally but there was no voter list of the year available to his knowledge. He also denied that he had received any kind of memo much less memo no. 10. He does accept that he was personally not present at the time of scrutiny but he had authorized one Sri Prabhakar Singh, Advocate to participate in the same but he was not allowed to go the place of scrutiny.

The other witnesses on behalf of the petitioner more or less state similar kind of things and there is nothing glaring pointed out by the respondent which requires to be taken not of.

On behalf of the respondent, 16 witnesses have been examined. The respondent's witnesses in question were either candidates in the said election or proposers of the respondent in question or voters. In the varied statements made in the evidence led by them, majority of them have submitted that 1998 voter list was the current voter list and there is no voter list as such of 2002. It also emerges that most of the candidates had

annexed voter list of the year 1998 and that was the voter list in operation at the relevant time. In other words there is nothing to support that there was a requirement upon the candidates to annex voter list of the year 2002 or there was need for Aharta (qualification) of 1st January 2002.

The Returning Officer was also summoned as an official witness who is Mr. R.L. Chongthu. In his evidence in examination-in-chief he has accepted that he was the Returning Officer by virtue of being the D.M. of Saharsa. 51 candidates had filed their nominations and he remembers rejecting one nomination paper as that of the petitioner. But significantly he also accepts in his examination-in-chief that certified copy of the electoral roll of the year 1998 was the valid document which was required to be filed along with the nomination papers as far as he could remember. But in his cross-examination he accepted that he rejected the nomination paper of the petitioner because he did not annex the voter list of the qualifying date of 1st January, 2002. He did accept that 1998 voter list was the mother roll. In other words, the Returning Officer could not satisfactorily explain in his evidence as to why he chose to reject the nomination of the petitioner for a voter list with qualifying date of 1st January 2002 when 1998 voter list was the mother roll and the Part and Serial Number furnished by the petitioner was the same as that of 1998 voter list. Though he admits that he had submitted extract of 1995 voter list which was no different from 1998 voter list.

Another significant aspect which emerges is that the Returning Officer states that certified copy of the electoral roll of 1998 was a valid document which was required to be filed along with the nomination papers of the candidates. From where does the Returning Officer get this notion has not been explained either by him or by learned counsel appearing on behalf of the respondent. The Court gets a feeling that the Returning Officer did not even know the basic requirement of law and the provisions including the provisions specifically provided in section 33 (5) of the Representation of the People Act, 1951.

The Court therefore comes to a considered opinion that there was no cogent or legal reason for rejection of the nomination of the petitioner. The Returning Officer had rejected the nomination paper without any valid reason or breach of law. He has totally failed to explain the considerations which went into the decision making of rejecting the nomination of the petitioner. He does not seem to be well versed with the requirement of law and rules while scrutinizing nomination papers filed by the candidates in this regard.

In totality therefore it is declared that the election petition as framed is maintainable and that the rejection of the nomination of the petitioner was an improper rejection under section 100 (1) (c) of the Representation of the People Act, 1951. The election petition is in order and petitioner has made out a case for interference.

Issue No. 1, 3 and 4 are answered in favour of the petitioner. Issue no. 2 is misplaced.

The Court declares the election of respondent no. 1, namely Balram Singh Yadav *alias* Balram Singh for Constituency No. 20 of Local Government of Saharsa-cum-Madhepura-cum-Supaul to be illegal and void and sets aside his election as such. Let the substance of the decision be communicated to Election Commission and the Chairman of the Bihar Legislative Council.

The election petition is allowed.

AJAY KUMAR TRIPATHI, J.

Patna High Court, Patna

Dated the 19th September, 2008

NAFR./RPS./Sr. Secy.

IN THE HIGH COURT OF JUDICATURE AT PATNA

E.P. No.4 of 2003

ABHAY KUMAR SINGH

VERSUS

BALRAM SINGH YADAV *alias* BALRAM YADAV

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133 24.09.2008—In the Judgment dated 19th September 2008 there is a typographical mistake in the name of the respondent. His alias name is Balram Yadav not Balram Singh.

In that view of the matter let @ name of the respondent be read as Balram Yadav instead of Balram Singh wherever it has been used in the judgment including the cause title of the case.

Ajay Kumar Tripathi, J.

अधीक्षक, सचिवालय मुद्रणालय,

बिहार, पटना द्वारा प्रकाशित एवं मुद्रित।

बिहार गजट (असाधारण) 308-571+100-डी0टी0पी0।

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